

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 STAFF REPORT	Hearing Date/Agenda Number P.C. 08-14-02 Item. 3.j.	
	File Number CP 02-023	
	Application Type Conditional Use Permit	
	Council District 5	
	Planning Area Alum Rock	
	Assessor's Parcel Number(s) 486-38-048	

PROJECT DESCRIPTION		Completed by: Susan Walsh
Location: South side of Story Road, approximately 350 feet easterly of South Jackson Avenue (2448 Story Road)		
Gross Acreage: 0.47	Net Acreage: 0.47	Net Density: N/A
Existing Zoning: CP Commercial Pedestrian	Existing Use: Commercial (medical office)	
Proposed Zoning: No change	Proposed Use: Addition of three(3) wireless communications antennas (including ancillary equipment) to the roof of an existing office building	

GENERAL PLAN		Completed by: SBW
Land Use/Transportation Diagram Designation General Commercial		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING		Completed by: SBW
North: Residential	R-1-8 Single Family Residence	
East: Commercial (mixed retail/office)	CP-Commercial Pedestrian	
South: Single Family Residential	R-1-8 Single Family Residence	
West: Commercial (mixed retail/office)	CP –Commercial Pedestrian	

ENVIRONMENTAL STATUS		Completed by: SBW
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY		Completed by: SBW
Annexation Title: Story		Date: 5/7/59

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial	Date: _____ <input type="checkbox"/> _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

OWNER	APPLICANT/DEVELOPER
Mark O'Connor 2448 Story Road San José, CA 95122	Leah Hernikl, Ruth and Going for Cingular Wireless P.O. Box 26460 San Jose, CA 95159

PUBLIC AGENCY COMMENTS RECEIVED**Completed by: Susan Walsh**

Department of Public Works
None recieved

Other Departments and Agencies
Fire memo attached

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Cingular Wireless, is requesting a Conditional Use Permit to allow the installation of three wireless communication antennas, 12.5 feet in height, mounted on the roof of a two-story medical office building. The site is located on the south side of Story Road, 350 feet easterly of South Jackson Avenue (2448 Story Road). The Zoning Ordinance requires a Conditional Use Permit (CUP) for wireless communication antennas located in the CP Commercial Pedestrian Zoning District. This proposal does not meet the definition for “building mounted” antennas since the proposed antennas would be more than 7 feet above the existing roofline of the building. This CUP also functions as a Site Development Permit for the installation of improvements, including the ancillary equipment, base transceiver stations (BTS) boxes, also planned to be located on the roof.

The character of the surrounding area is predominantly strip commercial on the south side of Story Road, to the east and west adjacent to the subject site. The land uses to the north are a mixture of single family and multiple family residential and to the south are single family detached residential.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from antennas of the proposed type posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined that the reported interference resulted from cordless telephones and not from the antennas.

Project Description

The proposed project consists of the installation of (3) three 4.5- foot wireless panel communication antennas mounted to the roof of an existing two-story office building at a height of 12.5 feet above the existing roof line. The three antennas would be mounted inside a fiberglass enclosure that will be mounted on top of an existing rooftop entry feature on the medical office building. Associated equipment would also be housed behind the enclosure and parapet walls and designed to compliment the existing architectural treatment.

The proposed facility is self-operating and unmanned, except for typical maintenance operations. The goal of this project is to provide enhanced wireless phone coverage in this area.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15303 which pertains to the new construction or conversion of small structures such as that which is proposed.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the subject site's General Plan Land Use/Transportation Diagram designation of General Commercial in that the primary on-site use is commercial.

ANALYSIS

The primary issues analyzed for the project include; 1) Conformance to the Zoning Ordinance, and 2) Conformance to Council Policy 6-20, Land Use Policy for Wireless Communications Antennas.

Conformance to the Zoning Ordinance Requirements

The maximum height for structures in the CP Commercial Pedestrian Zoning District is 50 feet. The proposed antennas and roof screen extend to a maximum height of 35 feet in conformance with this limitation. The project would also conform to the setbacks and other requirements of the CP Commercial Pedestrian Zone District.

Conformance to the Council Policy for Wireless Communications Facilities

The proposed project conforms to key applicable elements of the Council Policy. The Policy recommends that building mounted antennas be located a minimum of 50 feet horizontally from any property with a residential use or General Plan designation. The proposed antennas will be set back 50 feet from the adjacent residential property line to the south.

The Council Policy requires building or structure mounted antennas to be located as to minimize visual impacts, and to be architecturally integrated into existing structures wherever possible. The Policy also requires ancillary equipment to be screened. The proposed antennas and BTS equipment boxes would be set well back from the public right-of-way, architecturally integrated with the existing building design, well screened from the view of surrounding properties, and designed to match the colors and materials of the existing building.

In addition, the proposed rooftop location of the antennas does not eliminate required parking for the existing office use.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed addition to the existing commercial building is in compliance with the General Commercial designation of the General Plan.
2. The project site is located in the CP Commercial Pedestrian Zoning District. The maximum height for structures in the CP Commercial Pedestrian Zoning District is 50 feet. The project's proposed height would be 35 feet.
3. The proposed project installs a total of (3) three wireless communication antennas mounted on the roof of an existing office building. The proposed antennas would extend a maximum of 12.5 feet above the existing roofline.
4. The City Council has adopted a Policy (6-20), entitled Land Use Policy for Wireless Communication Facilities. This Policy states that wireless communications facilities are allowed in Commercial General Plan designations. It also provides criteria for siting wireless communication antennas to address potential visual impacts, allowable height, and setbacks from residential uses. The developer will be providing a fiberglass enclosure (matching the colors and materials of the existing structure) to screen the antennas and the ancillary equipment.
5. The proposed antennas will meet the Policy requirements that the antenna be architecturally integrated into the building, that all ancillary equipment be adequately screened, and that the antenna not add to the visual clutter of the building or structure. The antennas will meet the Policy requirements for a minimum 50 foot set back from the nearest residential use.
6. The subject site is surrounded by commercial uses to the east and west and residential uses to the north and south
7. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit*

automatically expiring regardless of any other expiration date contained in this permit. Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Foothill Medical BA-339-01 Cingular Wireless", dated June 10, 2002, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24)
2. **Plan Revision.** Within 60 days of the issuance of this permit and prior to recordation, the applicant shall revise the project plans to include the items listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
 - a. Colors shall be specified on the plans to match the existing building colors.
 - b. The new rooftop enclosure shall be enclosed on the south side.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Lighting.** This permit allows no new on-site lighting.
5. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
6. **Colors and Materials.** All building colors and materials are to match the existing building and shall be those specified on the approved plan set.
7. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP 02-023 shall be printed on all construction plans submitted to the Building Division.
8. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.

9. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
10. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
11. **Generators.** This permit does not include approval of emergency back-up generator on the subject site.
12. **Co-location.** This proposal shall not preclude the co-location of other similar wireless antenna facilities.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Ellen Magnie, Cingular Wireless
 4420 Rosewood Drive, 3rd Floor
 Pleasanton, CA 94588

207-10/SBWjb

Attachments

Location Map
 City Council Policy 6-20

CEQA Exemption
Fire Memo
Plan set